

BOARD OF APPEALS CASE NO. 4878

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BEFORE THE

**APPLICANT: Mt. Carmel Primitive Baptist
Church**

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ZONING HEARING EXAMINER

**REQUEST: Variances from the required
setbacks and parking requirements for
an existing church; 1707 Churchville
Road, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 12/9/98 & 12/16/98

HEARING DATE: February 10, 1999

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Record: 12/11/98 & 12/18/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant appeared before the Hearing Examiner requesting the following relief:

1. A variance from the requirements of Section 267-36, Table V, to allow institutional building and parking area with a rear setback of less than 80 feet.
2. A variance from the requirements of Section 267-36, Table V, to allow institutional building and parking area with a side set-back of less than 40 feet.
3. A variance from the requirements of Section 267-36, Table V, to allow institutional building and parking area within 50 feet of an adjacent residential lot.
4. A variance from the requirements of Section 267-25 to allow a house of worship with less than one parking space per three seats.

The subject parcel is located at 1707 Churchville Road in the Third Election District. The parcel is identified as Parcel No. 219, in Grid 4F on Tax Map 41. The parcel contains 1.5 acres, more or less, all of which is zoned R2.

Mr. A. O. Jackson appeared and testified that he is a deacon with the Mt. Carmel Primitive Baptist Church. Mr. Jackson testified that the Church has been in existence at the present location since 1934. He said that the topography of the Church slopes down from the rear of the property to MD Route 22. The Church is improved by a 2,679 square foot, one story church building with basement. Mr. Jackson testified that the photographs contained in the Staff Report are an accurate representation of the property.

Case No. 4878 - Mt. Carmel Primitive Baptist Church

Mr. Jackson testified that the Church wishes to construct a 1,935 square foot addition to the Church building. The addition would be for Church offices, handicapped bathroom facilities and would allow the relocation of the pulpit in the existing Church and the installation of a baptistry for baptism services in the Church. Applicant's Exhibits 16A and B demonstrate that the addition would be architecturally compatible with the existing Church. The Applicant is also proposing to increase the parking area. Presently, the parking lot is not striped and constructed to County standards. The proposed increase in parking area would allow for 48 spaces. The intent of the proposed expansion is to allow for increased facilities at the Church rather than an increase in the size of the congregation. Mr. Jackson said that the Church needed to expand its present location because the existing Church is an historic structure and the relocation of the congregation to another property is not feasible.

After discussions with the Church's neighbors, the Church agreed to a modification of the Site Plan supporting its application. The Church agreed to eliminate the drive surrounding the existing and proposed Church building, thereby also eliminating 10 parking spaces associated with the drive. Furthermore, the Applicant will eliminate the two parking spaces in the southwest corner of the property closest to the Roller residence, reducing the total number of proposed spaces to 48. The elimination of the drive and parking spaces will also allow the Church to maintain a 25 foot setback along the rear of the property. In addition, the elimination of the drive will allow the existing setback between the Church building and the side yard to remain. However, a variance to allow the expansion of the parking area to within 10 yards of the side yard in the front of the property will still be necessary.

Mr. Jackson testified that the 48 proposed parking spaces will be more than adequate to serve the needs of the congregation. The Church has never experienced a problem with vehicles parking on Route 22.

Case No. 4878 - Mt. Carmel Primitive Baptist Church

The Church applied for and received set-back variances in both Board of Appeals Case Nos. 3901 and 4139 to allow additions to the Church in previous years. In both of those cases, Church representatives testified that the Church building has a water problem which would be rectified by reconfiguration of the roof and regrading of the property. The Hearing Examiner found that the Church property was unique as a result of its topography and the existing water problem in granting the requested variances in those cases. Mr. Jackson testified that the problems complained of in Case 3901 and 4139 continue to exist as the Church was never able to complete the improvements described in those Board of Appeals cases. In addition, Mr. Jackson felt that the property was unique because of its historical status. Mr. Jackson further believes that the Church would suffer practical difficulty if the requested variances are denied and the Church will not be allowed to construct the addition that it needs and will not be able to conduct baptism services on site. Presently, the Church conducts baptism services in the Deer Creek or in neighboring churches. The Church is concerned about safety and health issues regarding conducting baptisms in Deer Creek. The existing Church does not have any facilities for conducting baptismal services. In addition, the Church does not have office space or handicapped bathroom facilities. All bathroom facilities in the existing Church are located in the basement.

Mr. Jackson does not believe that the proposed variances will cause diverse impact to surrounding properties. He has met with both of his immediate neighbors and the Church has agreed to modifications to their Site Plan to address the concerns of the neighbors. In particular, the Church has agreed to install a vegetative screen along the property line with Mr. and Mrs. Roller to limit the impact of the increased parking area on the adjoining properties.

Case No. 4878 - Mt. Carmel Primitive Baptist Church

Dudley Campbell of Campbell & Nolan Associates, Inc. testified as an expert property surveyor as well as an expert in site plan design. Mr. Campbell confirmed that the property is unique based on its history, topography and existing water problems. Mr. Campbell testified that the Applicant will suffer practical difficulty if the variances are not granted. He noted the continuing water problem on the property as well as the inability to provide handicapped accessible facilities. He also testified that the Church would not be able to conduct baptism services on site. Mr. Campbell testified that the Church could not redesign the proposed improvements to meet the required setbacks. He noted that the proposed addition would not encroach any further on the setbacks in the existing building.

Mr. Campbell testified that the existing parking area could accommodate by County standards approximately 18 vehicles. The proposed plan increases the number of spaces to 48 which would be sufficient to accommodate the Church's needs. He also testified that the Church can get a letter from Harford County which allows for parking on grassy areas of the Church property during holiday services.

Mr. Campbell testified that a vegetative screen can be installed along the property line between the subject property and the Roller property which will minimize the impact of any additional improvements. He noted that the Church is not currently planning any additional outside lighting in the parking area. However, he testified that the lighting could be designed so that the light is directed away from surrounding properties. As such, Mr. Campbell did not believe that the proposed variances would have any adverse impact on surrounding properties. In arriving at these opinions, he testified that he considered the limitations, guides and standards contained in Section 267-9(l) of the Harford County Zoning Code and that none of these provisions indicated that the requested variances should be denied.

Mr. William Roller appeared as an adjoining neighbor and testified that he had no objection to the requested variances as amended.

Case No. 4878 - Mt. Carmel Primitive Baptist Church

CONCLUSION:

The Harford County Zoning Code, pursuant to Section 267-11, authorizes the granting of variances provided the Board finds that:

- (1) by reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship; and
- (2) the variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigatable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104 (1960), where the court noted: "He met the burden; the irregularity of the ... lot ... that it was located on a corner of an arterial highway and another street, that it is bounded on two sides ... by parking lots and public ... institutions, that immediately to its south are the row houses ..."

Case No. 4878 - Mt. Carmel Primitive Baptist Church

The Court of Appeals of Maryland in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973) held that the following criteria are to be used for determining whether "practical difficulty" has been established:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Generally, an applicant must prove undue hardship in order to obtain a use variance; practical difficulty does not warrant the granting of a use variance. However, an area variance may be granted where the Applicant demonstrates practical difficulty or undue hardship or both.

The Applicants have demonstrated the subject property is unique based on its history, topography and ongoing water problems. In addition, the Applicants have demonstrated that they will suffer practical difficulty if the requested variances are denied by virtue of the fact that their water problems will continue, they will not be able to perform baptismal services on site and will not be able to provide handicapped accessible facilities. The Applicants have met with their neighbors and have agreed to modify their plans to satisfy the concerns raised by the neighbors. As such, the requested variances would not adversely effect surrounding properties.

Case No. 4878 - Mt. Carmel Primitive Baptist Church

Therefore, it is the recommendaiton of the Hearing Examiner that the following variances should be granted:

1. A variance from the requirements of Section 267-36, Table V, to allow an institutional building and parking area with a rear set-back of 25 feet;
2. A variance from the requirements of Section 267-36, Table V, to allow an institutional building and parking area with a side set-back of 10 feet;
3. A variance from the requirements of Section 267-36, Table V, to allow an institutional building and parking area within 10 feet of an adjacent residential lot on the side yard and 25 feet on the rear yard; and
4. A variance from the requirements of Article 267-25 to allow a house of worship with less than one parking space per three seats (60 spaces required and 48 spaces shown).

The variances shall be subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections;
2. The Applicant shall submit a Site Plan for review to the Development Advisory Committee ("DAC");
3. The Applicant shall submit a landscaping plan to the Department of Planning & Zoning for review and approval. This landscaping plan shall include plans for an evergreen vegetative screen along the perimeter of the property bordering on the Roller property. This vegetative screen shall be located as close to the parking area as possible to limit the diffusion of light from headlights onto the Roller property;
4. Any exterior lighting around the building and/or parking area be directed on site and away from surrounding properties.

Date **FEBRUARY 24, 1999**

L. A. Hinderhofer
Zoning Hearing Examiner